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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/568,092

02/10/2006

Sang-Kee Kim

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EXAMINER

WALKER, NED ANDREW

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,092	<b>Applicant(s)</b> KIM, SANG-KEE	
	<b>Examiner</b> NED A. WALKER	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 1,2,4,6-8 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,5,9 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. The Applicant's response, filed December 24<sup>th</sup>, 2008, to the Requirement for Election/Restriction comprised an election of Species A6: Figures 8-10 and Species B1: Circular cover plate with traverse.
2. The Examiner respectfully disagrees with Applicant's argument that the restriction requirement is improper on the grounds that the species all contain the same or corresponding technical feature in the form of a combination of a cover plate and an annular closing member with a peripheral portion attached to the cover plate by a fixing portion, and therefore the species are not restrictable. While the Examiner does not contend that the common technical feature is what Applicant argues, this common technical feature as argued by the Applicant is in fact shown in the prior art (US Pat. No. 1,857,853), and therefore cannot be a special technical feature under PCT Rule 13.2. Furthermore, the shape of the cover plate is limiting since it provides a different degree of coverage of the container and/or would potentially correspond to a different container body shape; these mutually exclusive shapes consist of an increased burden on the Examiner, as exemplified by the necessity for a separate keyword search for each shape as claimed by the Applicant. For these reasons, the Restriction is deemed proper and the Applicant's election of Species A6 and B1 is upheld by the Examiner.
3. Applicant's argument that all of the present claims correspond to the elected species A6 and B1 has been fully considered but is not persuasive. The Examiner contends quite the opposite, which is that technically none of the claims are drawn to

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the elected species since all of the independent claims are drawn to either “a cover plate having a rear surface *for contacting a container*” (claims 1, 3) or “a cover plate *contacting a container* at its back surface” (claim 4). As clearly shown in the elected Figure 10, the cover plate (10) does NOT contact the container (30), nor does the elected embodiment indicate that the cover plate is for contacting the container.

Nevertheless, in the interest of compact prosecution, the Applicant has agreed to examine claim 3 and the applicable dependent claims 5, 9, and 11 as drawn to the elected species herein, with the provision of an objection to the claims for including functional language not exhibited or inherent in the elected embodiment, as noted below.

4. Claim 1 is withdrawn since FIGS. 8-10 do not illustrate or indicate that the cover plate has a rear surface for contacting the container and that the annular closing member has a remaining portion for detachably and resiliently contacting the rear surface of the cover plate. Claim 4 is withdrawn for reasons previously noted. Claim 6 is withdrawn because the FIGS. 8-10 do not show the cover plate having a ball shaped protrusion. Claim 10 is withdrawn because of the elected circular cover plate and Figures 8-10 do not show or dictate the existence of tab-like formations. Claims 2, 7, and 8 are withdrawn since they are dependent on withdrawn parent claims.

5. In summary, claims 1, 2, 4, 6-8, and 10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Specification***

6. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical or inventive feature set forth in the application.

***Claim Objections***

7. Claims 3, 5, 9, and 11 are objected to because of the following informalities: claims 3 states “a cover plate having a rear surface *for contacting a container*”; however, this is not illustrated in the elected Figures 8-10. Since the phrase “for contacting a container” consists of functional language that is intended use and that is not exhibited by the embodiment either structurally or inherently, it will be given little patentable weight as currently recited. Appropriate correction is required.

Claims 5, 9, and 11 are objected to for incorporating the errors from their respective parent claim by dependency.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**9. Claims 3, 5, 9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by McMann (US Pat. No. 1,857,853).**

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McMann discloses a container cover (FIGS. 1-2) comprising: a cover plate (19) having a rear surface for contacting a container; and a closing member (17, 18) having a fixing portion (20) fixed to the cover plate along a peripheral portion of a second surface of the cover plate (FIG. 2) and an annular contact portion (17) bent from the fixing portion toward said second surface and extending integrally therefrom (FIGS. 1-2); wherein the cover plate has a round formed at a side end of the cover plate along its lower peripheral portion (FIGS. 1-2); wherein no part of said contact portion extends integrally farther than any other part of said contact portion (FIG. 2); wherein the contact portion includes an end having at least one protrusion (22) extending from said end and adapted to press against an outer surface of a container being covered (FIG. 2).

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NED A. WALKER whose telephone number is (571)270-3545. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NW

/Anthony D Stashick/  
Anthony D Stashick  
Supervisory Patent Examiner, Art Unit 3781